

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
Plaintiff	:	
	:	
V.	:	Civil Action No.
	:	
CLEARVIEW LAND DEVELOPMENT	:	
COMPANY, <i>in personam</i> ,	:	
	:	
and	:	
	:	
39 ACRES OF LAND, MORE OR LESS,	:	
A/K/A CLEARVIEW LANDFILL	:	
SECTION OF THE LOWER DARBY	:	
CREEK AREA SUPERFUND SITE	:	
IN DARBY, DELAWARE COUNTY,	:	
PENNSYLVANIA, <i>in rem</i> ,	:	
Defendants	:	

**COMPLAINT**

The United States of America, ("United States"), by authority of the Attorney General and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint and alleges as follows:

**NATURE OF THE ACTION**

1. This is a civil action under Section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. § 9604(e). The United States seeks an order granting EPA and its representatives or designees immediate, unimpeded entry and access to 39 acres of property ("Defendant Property") which is more fully described below, and which is part of the Lower Darby Creek Area Superfund Site ("Site") located in Delaware County, Pennsylvania.

2. EPA and its representatives and/or designees need immediate and continuing

access to the site to conduct a Remedial Investigation and Feasibility Study, design, implement, operate and maintain appropriate remedial actions at the Site, conduct reviews as necessary and to otherwise address the release or threat of release of hazardous substances at or from the Site, pursuant to CERCLA, 42 U.S.C. §§ 9601-9675.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over this action and the parties hereto, pursuant to Sections 104(e) and 113(b) of CERCLA, 42 U.S.C. §§ 9604(c) and 9613(b) and 28 U.S.C. §§ 1331 and 1345.

4. Venue is proper in this judicial district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) and (c) because: (a) Defendant Clearview Land Development Company (“Clearview”) is registered as a corporation under the laws of the Commonwealth of Pennsylvania, (b) Defendant Property is located within this judicial district and (c) the claim or events which gave rise to this action occurred in this district.

### **DEFENDANTS**

5. Defendant Clearview is a corporation established under the laws of the Commonwealth of Pennsylvania. Based upon information obtained by the United States, Clearview has not operated for a number of years, but it has not been formally dissolved under the laws of the Commonwealth of Pennsylvania. The records of the Pennsylvania Department of State, Corporation Bureau, show that Clearview remains listed as a corporation in “good standing.”

6. Defendant Clearview falls within the definition of a “person” within the meaning

of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

7. Defendant Property, consists of 39 acres, more or less, in Darby, Delaware County, Pennsylvania, bounded to the north by Cobbs Creek, to the west by Darby Creek, to the south by Darby Creek and 84th Street, and to the east by Buist Avenue, near the intersection of 84th Street and Lindbergh Boulevard. Defendant Property, as part of the Site, is the land identified in a June 13, 1958 deed by and between Max A. Rosenberg and Minnie, his wife, and Delaware Salvage Company, Grantors and Clearview Land Development Company, Grantee, which is recorded in Deed Book 1916, page 385 in the Recorder of Deeds Office in Delaware County, Pennsylvania, and is also described as Parcel 001 on Delaware County Tax Map 15-10, and is identified by the Delaware County Tax Assessor's Office as Folio number 15-00-00972-00. Exhibit A includes a copy of the aforementioned deed.

8. The United States, on behalf of the EPA, seeks court-ordered access to the Defendant Property in order to perform a Remedial Investigation/Feasibility Study at the Site to determine the nature and extent of contamination of the Site containing the Clearview Landfill, and for designing, implementing, operating and maintaining remedial alternatives and for performing five-year reviews as required under CERCLA.

### **BACKGROUND**

#### **A. The Site and EPA's Response Activities**

9. The Defendant Property is a landfill which is located within the Lower Darby Creek Area Superfund Site and lies, in large measure, in Darby, Delaware County. An additional parcel of the Landfill owned by the City of Philadelphia is not at issue in this case. Exhibit B is a

map of the Site.

10. The Defendant Property is owned by Defendant Clearview, a now defunct Pennsylvania corporation having no present business activities or offices.

11. From 1959 until 1973, when the Commonwealth of Pennsylvania ordered it closed, Defendant Clearview, Edward I. Heller and Richard R. Heller operated Defendant Property as an unpermitted waste dump.

12. Since its closure, various businesses have operated on the Defendant Property. Richard Heller, a former operator of the Defendant Property and former officer of the defendant, has conducted business and permitted others to conduct business on the Defendant Property since 1976. The businesses include waste hauling, drum recycling, auto repair and similar activities, all operating without a permit.

13. As a result of the waste transfer and/or disposal activities conducted on the property between October 27, 1997 and April 2, 2001, the Pennsylvania Department of Environmental Protection (PADEP) issued a \$59,000 civil penalty against Richard R. Heller, City Wide Service Inc. and Clearview Land Development Company on August 2, 2001 for violations of the Solid Waste Management Act, as amended, 35 P.S. § 6018.101-6018.1003.

14. In May 1998, EPA, as part of its Preliminary Assessment/Site Investigation ("PA/SI"), sampled soil and groundwater at six properties along Darby Creek including the Clearview Landfill as well as obtained samples of the surface water, seeps and sediments in Darby Cobbs and Hermesprota Creeks.

15. Analytical results based on the sampling, revealed, inter alia, the presence of

polychlorinated biphenyls ("PCBs"), metals, polycyclic aromatic hydrocarbons ("PAHs") and pesticides in addition to other hazardous substances on the Defendant Property..

16. As a result of the May 1998 sampling effort, EPA placed the Site on the National Priorities List ("NPL"). A site is placed on the NPL based upon EPA's evaluation of specific information about the site, using the Hazard Ranking System. Sites placed on the NPL are considered those which pose the most significant risk to public health, welfare and the environment.

17. To conduct additional sampling on the properties surrounding the Defendant Property, as required by the Remedial Investigation/Feasibility Study ("RI/FS"), EPA obtained access from the adjacent owners (the City of Philadelphia and the U.S. Fish and Wildlife Service) and has sampled points along Darby and Cobbs Creeks, points throughout the John Heinz Wildlife Refuge at Tinicum, the Eastwick Regional Park in Philadelphia County as well as in rights of way throughout the residential neighborhood next to Eastwick Regional Park in Philadelphia County. The Defendant Property is the last remaining property that needs to be sampled as part of the RI/FS.

**B. Efforts To Identify Owners and Procure Access To Defendant Property**

18. EPA has undertaken extensive efforts to identify the present owners of the Defendant Property to procure consent to enter the Property to conduct the sampling required under the RI/FS and thereafter to implement appropriate remedies, without success.

19. The record owner of the Defendant Property is Clearview Land Development Company ("Clearview"), a Pennsylvania corporation. Although it is still in existence, Clearview

has been inactive since the Clearview Landfill closed in 1976. Upon information and belief, the majority shareholder of Clearview was Edith Heller, who died intestate over ten years ago.

Edward I. Heller, Edith Heller's surviving spouse, died intestate in 2001. None of the stock in Clearview was included in the Inventory of Edward Heller's estate.

20. Richard Heller, the son of Edith and Edward Heller, was an officer of the Company, and has, in the past, held himself out as president of Clearview. Richard Heller continued to operate several businesses on the Clearview Property and continued to enter into leases of the Defendant Property as recently as December 2002. EPA made repeated attempts to gain consent to enter the property including contacting Richard Heller by telephone in April, 2002, meeting with Heller to explain the sampling program, making written requests to Heller on April 8, 2002 and April 9, 2002 and providing him with a model access agreement.

21. However, by June 4, 2002, when EPA followed up its contact with a telephone call requesting access to conduct a RI/FS, Richard Heller, through his counsel, denied that he is an authorized representative of Clearview and further denied that he had any authority to grant the EPA entry on Defendant Property to do the sampling and other work required by the RI/FS. Heller's counsel also advised that the Defendant Company was defunct and that Heller had resigned as an officer in 1976 and that there were no other officers or shareholders still living who could consent to the entry.

22. On June 11, 2002, EPA sent by certified mail a General Notice Letter of potential liability for the Site to Richard Heller, as former operator of the Defendant Property and to the Defendant Company in care of Heller, as a former officer. Both General Notice Letters were

returned to EPA unclaimed.

23. After several further telephone conversations between Heller's counsel and EPA, EPA, on July 17, 2002, hand delivered a General Notice Letter to Heller and to the Defendant Company, c/o Heller at Heller's residence. Copies of same were later delivered to Heller's counsel on July 24, 2002.

24. Thereafter, on October 9, 2002, EPA sent a draft Administrative Order fo Access on Consent ("AOC") to Heller's counsel requesting that Heller consent to access to the property for the conducting of a RI/FS on the Clearview Landfill portion of the Site. After attempting to negotiate the provisions of the AOC over several months, Heller's counsel advised on December 6, 2002 that Heller was not the owner of the Defendant Property and, although Heller had no objection to EPA having access to the property, that Heller had no legal authority to consent to that access.

25. No other corporate directors or officers who could assume control of Clearview and voluntarily consent to access have been identified.

26. The United States requires immediate and continuing access to the Defendant Property to conduct a Remedial Investigation and Feasibility Study, design, implement, operate and maintain appropriate remedial actions at the Site, conduct reviews as necessary and to otherwise address the release or threat of release of hazardous substances at or from the Clearview Landfill Site.

27. Because Clearview is no longer a functioning corporation, and no other person has been identified as having an ownership interest in or control over Defendant Property, EPA

requires a Court order to grant it immediate and long term access to the site.

### **CLAIM FOR RELIEF**

28. The preceding paragraphs are re-alleged and incorporated herein by reference.

29. Section 104(e)(1) of CERCLA, 42 U.S.C. § 9604(e)(1) authorizes the President, his employees and his duly designated representatives to enter a vessel, facility, establishment or other place or property “if there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance or pollutant or contaminant.”

30. Section 104(e)(1) of CERCLA, 42 U.S.C. § 9604(e)(1) authorizes the President, his employees and his duly designated representatives to enter a vessel, facility, establishment or other place or property to determine the need for response, to choose or take any response action under CERCLA or otherwise to enforce the provisions of CERCLA.

31. The places to which entry is authorized are set forth in Sections 104(e)(3)(A)-(D) of CERCLA, 42 U.S.C. § 9604(e)(3)(A)-(D). These places include, but are not limited to, any facility, establishment, place or property “where any hazardous substance or pollutant or contaminant may be or has been generated, stored, . . . disposed of . . .”; “from which or to which a hazardous substance or pollutant or contaminant has been or may have been released . . .”; “where such release may be threatened . . .”; or “where entry is needed to...effectuate a response action under this subchapter.”

32. Section 104(e)(5)(B) of CERCLA, 42 U.S.C. § 9604(e)(5)(B), authorizes the President, through the Attorney General, to commence a civil action to compel compliance with



a request or Order for entry or inspection, and states in pertinent part:

Where there is reasonable basis to believe there may be a release or threat of a release of a hazardous substance or pollutant or contaminant, the court shall take the following actions:

(i) In the case of interference with entry or inspection, the court shall enjoin such interference or direct compliance with orders to prohibit interference with entry or inspection unless under the circumstances of the case the demand for entry or inspection is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

33. Section 104(e)(6) of CERCLA, 42 U.S.C. § 9604(e)(6) further provides that nothing in Section 104 “shall preclude the President from securing access or obtaining information in any other lawful manner.”

34. The President’s authority under Section 104 of CERCLA, 42 U.S.C. § 9604, has been delegated to EPA pursuant to Executive Order No. 12580.

35. As required by Section 104(e)(1) of CERCLA, 42 U.S.C. § 9604(e)(1), EPA has a reasonable basis for its belief that there has been a release or threat of release of a hazardous substance, pollutant or contaminant at Defendant Property.

36. The activities that EPA and its representatives seek to conduct on Defendant Property are of the types that are authorized by Section 104(e)(1) of CERCLA, 42 U.S.C. § 9604(e)(1). Specifically, EPA seeks access to Defendant Property for the purpose of conducting a Remedial Investigation and Feasibility Study, designing, implementing, operating and maintaining appropriate remedial actions at the Defendant Property, conducting reviews as necessary and to otherwise addressing the release or threat of release of hazardous substances at or from the Defendant Property.

37. Defendant Property is a vessel, facility, establishment, or other place or property within the meaning of Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), for one or more of the following reasons: (a) a hazardous substance has been stored, treated and/or disposed there; (b) a hazardous substance has been released there; (c) a release of a hazardous substance is or may be threatened there; (d) entry is needed to effectuate a response action under CERCLA.

38. EPA has undertaken reasonable efforts to secure access to Defendant Property, but has been unable to identify any persons capable of asserting authority or control over Defendant Property for the purpose of granting such access.

39. The absence of any persons capable of asserting authority or control over Defendant Property has interfered or will interfere with efforts to gain access to Defendant Property for the purposes of conducting a Remedial Investigation and Feasibility Study, designing, implementing, operating and maintaining appropriate remedial actions at the Defendant Property, conducting reviews as necessary and to otherwise addressing the release or threat of release of hazardous substances at or from the Defendant Property. Therefore, the United States requests the assistance of the Court in confirming through issuance of an appropriate court order the United States' right of access to the Defendant Property under Section 104 of CERCLA.


**RELIEF REQUESTED**

WHEREFORE, Plaintiff, the United States of America, respectfully requests this Court to:


- A. Issue an order against Defendant Clearview Land Development Company, *in personam*, and against Defendant Property, *in rem*, granting EPA, its agents, contractors, and other representatives immediate and unconditional access to and through all portions of Defendant Property for such duration as is necessary to conduct a Remedial Investigation and Feasibility Study, design, implement, operate and maintain appropriate remedial actions at the Site, conduct reviews as necessary and to otherwise address the release or threat of release of hazardous substances at or from the Site, pursuant to CERCLA, 42 U.S.C. §§ 9601-9675.
- B. Enjoin Defendant Clearview Land Development Company from taking any actions that obstruct, impede or otherwise interfere with EPA's entry and access to the Defendant Property for the aforementioned purposes.
- C. Grant such other relief as is just and appropriate.

Respectfully submitted,

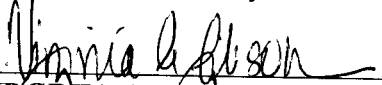
THOMAS L. SANSONETTI  
Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice



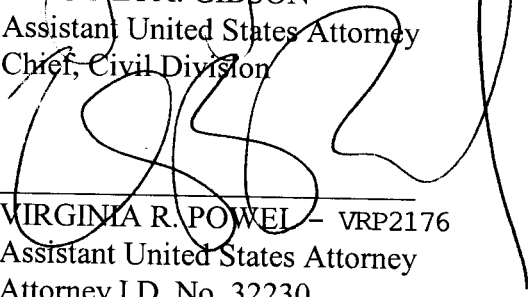
ROBERT D. BROOK  
Assistant Section Chief



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OF COUNSEL  
BONNIE PUGH WINKLER  
Assistant Regional Counsel  
Office of Regional Counsel  
Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103

# EXHIBIT A

**This Indenture,**

Made the 1:28 day of June  
year of our Lord one thousand nine hundred and fifty-eight (1958)  
BETWEEN MAX A. ROSENBERG And  
MINNIE, his wife and DELAWARE SALVAGE CO. (hereinafter called the Grantor) of one part  
JID  
CLEARVIEW LAND DEVELOPMENT COMPANY (hereinafter called the Grantee)

Witnesseth, That the said Grantor:

for and in consideration of the sum (One Dollar (\$1000))

lawful money of the United States of America, unto them well and truly paid by the said Grantee:

as and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged have granted, bargained, sold, aliened, enfeoffed, released and confirmed, and by these presents do bargain, sell, alien, enfeoff, release and confirm unto the said Grantee, its successors and assigns

**Whereas:**

ALL THAT CERTAIN tract or parcel of ground, with buildings and improvements thereon erected, Situate in the Township of Darby, County of Delaware, State of Pennsylvania, as shown on the plan for Inland Outcrops, made by Damon and Foster, Civil Engineers, Sharon Hill, Pennsylvania, dated June 24, 1957, being bounded and described as follows:

BEGINNING at a point the intersection of the centerline of 90th Street, as laid out (70 ft. D.S.) wide, with the centerline of Mohens Avenue (50 ft. D.S.) wide, (not open); thence, extending along the center line of said Mohens Avenue said centerline being the Darby Township, Delaware County, City of Philadelphia Line, S.36 degrees 40 minutes 20 seconds W. 3000 ft. (more or less) to a point in the Northwestly low water line of said Darby Creek, meandering northwestwardly and northeastwardly by its various courses and distances, 3404' More or less) to a point; thence, leaving said Darby Creek and extending S.36 degrees 40 minutes 20 seconds W., along the Darby Township-City of Philadelphia Line, (444.79 ft. more or less U.S.) (443.79 more or less D.S.) to a point in the centerline of said 90th Street; thence extending along the centerline of said 90th Street, said centerline being also the Darby Township-City of Philadelphia Line, S.53 degrees 19 minutes 0 seconds E., (750.00 ft. U.S.) (151.44 ft. U.S.) to the first mentioned point or place of beginning.

BEING in part the same premises which Edward Rafferty and Elisabeth R. Rafferty granted and conveyed to the Delaware Salvage Company, a Pennsylvania Corporation by Deed dated February 7, 1956, which deed is recorded in the Office for the recording of Deeds in and for the County of Delaware, Commonwealth of Pennsylvania in Deed Book No. 1000, page 315. The said Delaware Salvage Company having filed a Declaration of Trust under date of November 1, 1957 wherein it acknowledged that it held the said premises in trust for Max A. Rosenberg, which Declaration is recorded in the office for recording of Deeds in and for Delaware County, Pennsylvania in Deed Book 1002, page 600; Being also in part premises granted and conveyed by Forrester R. Scott and Mary Louise, his wife to Max A. Rosenberg by deed dated April 16, 1956 recorded in the Office for the recording of Deeds in and for Delaware County, Commonwealth of Pennsylvania, Deed Book 1021, page 258; Being also in part premises granted and conveyed by Edward A. Montgomery, singleman to Max A. Rosenberg by Deed dated November 6, 1951 and recorded in Deed Book 1020, page 393; Being also in part premises granted and conveyed by Luke Fisher and Nadia, his wife to the present grantee, Clearview Land Development Company by deed dated - ✓, recorded in the office for the recording of deeds in and for Delaware County, Commonwealth of Pennsylvania, deed Book 1044 page 340, Max Rosenberg one of the present grantors being the legal title holder to a portion of the aforesaid mentioned premises and Delaware Salvage Co. being the other legal title holder to the remainder of the aforesaid premises holding said premises in trust for Clearview Land Development Company.

UNIQUE  
(Red)

Together with all and singular the Streets, Alleys, Passages, Ways, Waters, Water-Courses, Rights, Liberties, Privileges, Hereditaments and Appurtenances, whatsoever thereto belonging, or in any wise appertaining, and the Reversions, Remainders, Rents, Issues and Profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever, of the Grantee

or otherwise howsoever, of, in and to the same and every part thereof. In law, equity

To have and to hold the said lot or piece of ground above described

Hereditaments and Premises hereby granted or mentioned and intended so to be,

With the Appurtenances,

unto the said Grantee, its Successors

Heirs and Assigns, to and for the only proper use and behoof of the said Grantee, its Successors

Heirs and Assigns forever.

IN WITNESS WHEREOF, the Grantors have hereunto set their hands and seals, Dated the day and year first above written.

Witness:

Flora M. Semberg

BY

Attest

Delaware Salvage Co. (SEAL)

Helvin Fischmann, President

Corinne Fischmann, Secretary

Max A. Rosenberg (SEAL)

Minnie Rosenberg (SEAL)

UNIQUE  
(Red)~~And the said~~~~these presents, certain grant and agree to and with the said~~~~Heirs, Executors and Administrators, Do~~~~Hereditaments and Premises herein~~~~described and granted, or mentioned and intended so to be, with the Appurtenances, unto the~~~~Heirs, all and singular the~~~~Heirs and Assigns, against the said~~~~Heirs, and against all and every other Person Persons whomsoever~~~~ever lawfully claiming or to claim the same or any part thereof~~~~shall and will~~~~WARRANT and forever DEFEND.~~~~Witness Whereof, the said~~~~SEALED AND DELIVERED  
IN THE PRESENCE OF US:~~

Received the day of the date of the above Indenture of the above named grantee, Clearview Land Development Company.

Witness:

Flora M. Rosenberg.

Max A. Rosenberg

Minnie Rosenberg

Melvin Fischmann

President Delaware Salvage Co. (SEAL)

Corinne Fischmann:

Secretary Delaware Salvage Co.

ON THE 13th day of June Anno Domini 1959 before me the subscriber A Notary Public personally appeared the above named Max A. Rosenberg and Minnie Rosenberg, his wife and in due form of law acknowledged the above or foregoing INDENTURE to be their, each of their act and deed, and so. the same may be recorded as such.

Witness and notarial seal the day and year aforesaid.

Flora M. Rosenberg

(SEAL)

Notary Public

My Commission expires 1/2/59

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF PHILADELPHIA I SS:

On the 13th day of June, 1959 before me, the subscriber, a Notary Public for the Commonwealth of Pennsylvania, residing in Philadelphia, personally appeared Corinne Fischman, Secretary of the said Delaware Salvage Co. (a Pennsylvania corporation) who being duly sworn according to law, says that he was personally present at the execution of the above Indenture, and saw the Common or Corporate Seal of the said Corporation; that the said Indenture was duly sealed and delivered by Melvin Fischman, President of the said Corporation, as and for the act and deed of the said Corporation, for the uses and purposes therein mentioned, and that the names of this deponent as Secretary and of Melvin Fischman as president of the said Corporation subscribed to the above Indenture in attestation of its due execution and delivery, are of their and each of their respective handwritings.

SWORN to and subscribed before me, the day and year aforesaid, witness my hand and notarial seal.

Corinne Fischman

Mellie Peskin

(SEAL)

Notary Public

My Commission expires July 7, 1961

Registered County of Delaware Feb. 11, 1959

I hereby certify that the precise address of within named Grantee  
1913 Walnut St., Phila., Pa.

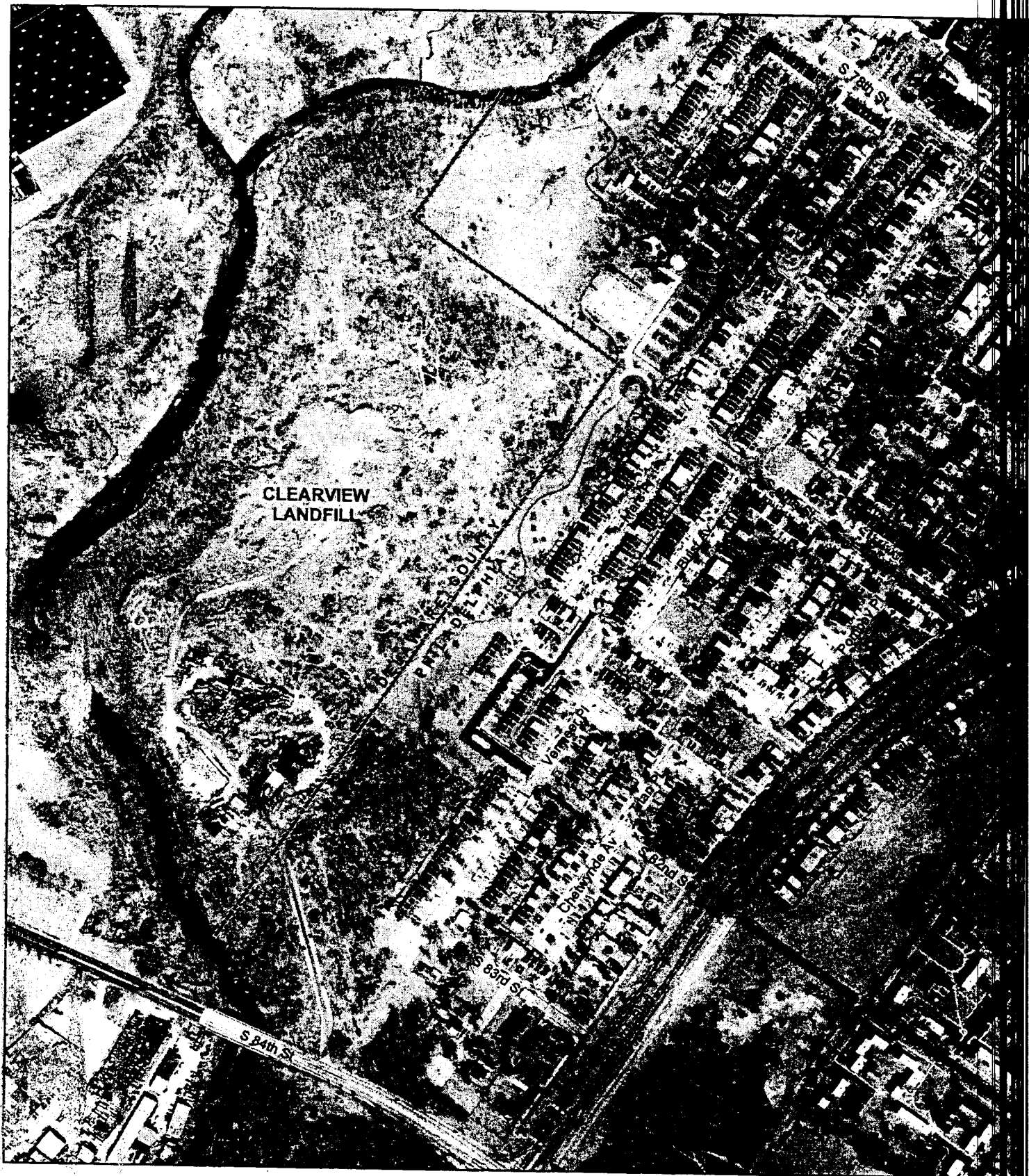
Received Feb. 11, 1959 1:27 PM '59  
Written by R. P. Small

Page 1  
Comp. by: *Edward G. Gies* Recorder

Page 1. Sealed Transfer Tax Affidavit filed



# EXHIBIT B



Source: Infrared Aerial Photograph from Land and Mapping Services, Municipal Boundary from City of Philadelphia. Projection: PA State Plane South, NAD83 Feet.

#### Legend

- ◆ Monitoring Well
- ⊙ Soil Boring
- Test Pit

1 inch equals 386 feet



**TETRA TECH DELAWARE**  
Knowledge Systems  
88 Wood Main Street, Suite 400  
Chesapeake, Delaware 19702-1801  
302.738.7851 800.462.0810  
fax 302.464.8888  
url www.tetratech-usa.com

#### Site Plan

Sampling Area  
City of Philadelphia Property  
Adjacent to Clearview Landfill  
Lower Darby Creek Area Site

